



Region 10 Briefing Paper for the Office of the Regional Administrator

MEETING/EVENT TITLE:

"Deschutes TMDL Notice of Intent from Northwest Environmental Advocates – How to Respond"

MEETING DATE: 11/7/2017 10:00 am – 10:45 am

LOCATION: Dan's Office

CONFERENCE CALL LINE: (b) (6)

PREPARED BY: Chris Zell and Leah Brown

DATE: 10/19/2017

INVITED EPA ATTENDEES: Dan Opalski; Jim Havard; Jim Curtin; Holly Arrigoni; Chris Lewicki; Dave Croxton; Laurie Mann; Leah Brown; Jennifer Byrne; and Chris Zell

I. REQUESTING OFFICE

Office of Water and Watersheds / Watershed Unit

II. TIMING

On August 23, 2017 NWEA issued a Notice of Intent (NOI) to sue EPA for failure to perform the mandatory duty of approving or disapproving the Deschutes River TMDL. NWEA may file suit 60 days from NOI submittal (~ October 22, 2017). Based on preliminary conversations with NWEA on 10/13/2017, we understand that the July 2017 resubmittal letter will not allay litigation.

III. PURPOSE

- Provide HQ (Watershed Branch) a summary snapshot of the Deschutes TMDL and administrative history
- Share outcomes from informal NWEA conversations held with Ecology on 10/13/2017

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IV. BACKGROUND/HISTORY

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area (186 mi²) is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The study area includes the major cities or towns of Olympia, Lacey, Tumwater, and Rainier. Ecology submitted the final Phase 1 Deschutes TMDL to EPA for approval on December 17, 2015. The submitted TMDL package included a request that EPA approve allocations for 71 (there are actually 73) Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform, and fine sediment).

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Ecology chose to resubmit the Deschutes TMDL on July 17, 2017, and asked EPA "to focus" on a smaller subset of TMDLs for bacteria, temperature, and fine sediment. (b) (5)

Deschutes (WA) TMDL Key Dates

| Dates | Event |
|-------------------------|--|
| 2004 | Sampling Plan Completed |
| 2003 - 2007 | Monitoring |
| 2007 - 2014 | TMDL Development |
| April 2014 | Announcement to Submit Freshwater Components Only |
| December 2015 | Submit TMDL to EPA |
| February - October 2016 | Concerns shared with Ecology |
| June 2016 | Squaxin Island Tribe – Tribal Coordination Meeting |
| August 2016 | Discussion with NWEA in Portland, OR |
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| January 2017 | Puget Sound FOIA |
| March 2017 | EPA Developed Bacteria TMDLs |
| June 2017 | EPA & Ecology Negotiate Resubmit Letter |
| July 2017 | Receive Resubmit Letter from Ecology |
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| August 2017 | Receive Deschutes NOI from NWEA |
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| October 13, 2017 | Discussion with NWEA |

V. KEY ISSUES

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- NWEA issued a mandatory duty NOI on August 23, 2017
- A conversation with NWEA on October 13, 2017 indicates the July 2017 resubmittal letter will not deter litigation

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VI. REGULATORY SUMMARY (if appropriate)

40 CFR 130.7(d)(2): *"The Regional Administrator shall either approve or disapprove such listing and loadings not later than 30 days after the date of submission...."*

VII. ADDITIONAL POLICY AND LEGAL INFORMATION

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X. NEXT STEPS / UPCOMING DEADLINES

To be determined following identification of recommendation.

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